

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ZURICH AMERICAN INSURANCE CO.
a/s/o Green Valley Terrace SF, LLC d/b/a
Atlantic Shore Rehabilitation and Health
Center,

Plaintiff,

vs.

C.A. NO. 18-169

TOWN OF MILLSBORO,

Defendant.

DEFENDANT'S FIRST AMENDED ANSWER TO COMPLAINT

1. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

2. Admitted.

3. Admitted.

4. Admitted.

5. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

6. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

7. Admitted.

8. Admitted.

9. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

10. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

11. Denied.

12. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

13. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

14. Defendant incorporates paragraphs 1- 13.

15. This paragraph states a legal conclusion to which no response is required.

16. Admitted.

17. This paragraph states a legal conclusion to which no response is required.

18. Denied.

19. Denied as to the whole and each subpart.

First Affirmative Defense

Defendant Town of Millsboro is immune from the claims asserted pursuant to 10 Del.C. §4011(a) and §4011(b)(5).

Second Affirmative Defense

The plaintiff's claims are barred and/or limited by the comparative negligence of plaintiff's subrogor which knew or should have known that the facility was built directly on top of a sewer main without a sufficient vertical drop to prevent a sewage back-up in the event of a rain storm sufficient to overwhelm the system and in other ways as discovery may reveal.

WHEREFORE, defendant demands that the action be dismissed with prejudice, costs to be paid by the plaintiff.

MURPHY & LANDON

/s/ Roger D. Landon

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